



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse12071367

[REDACTED],
Complainant,

v.

APEX TOOL COMPANY,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred in this instance. 910 IAC 1-3-2(b).

On July 24, 2012, [REDACTED] ("Complainant") filed a Complaint with the Commission against Apex Tool Company ("Respondent") alleging discrimination on the basis of gender in [REDACTED] and the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated due to her gender. In order to prevail, Complainant must show that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations; and (4) similarly-situated male employees were treated more favorably under similar circumstances.

It is evident that Complainant falls within a protected class by virtue of her gender and that she suffered an adverse action when she was terminated on July 2, 2012. However, there is no evidence that Complainant was not meeting Respondent's legitimate business expectations and clear that Respondent treated similarly-situated male employees more favorably under the circumstances.



By way of background, Complainant began working for Respondent in early November 2011. Respondent alleges that Complainant suffered from attendance issues and ultimately counseled her regarding missed shifts and late arrivals; however, there is no evidence of such issues or discipline. Respondent admits that it does not maintain individual personnel files or disciplinary documents for its employees. Further, Respondent admits that it does not publish or distribute an employee handbook regarding attendance and leave policies. Moreover, Respondent admits that similarly situated male employees were granted extended periods of vacation time, missed shifts, and arrived late without being terminated. Thus, while Respondent alleges it terminated Complainant for poor job performance and attendance, Respondent's rationale is unworthy of credence and is likely pretext for unlawful discrimination on the basis of gender. As such, there is probable cause to believe that a discriminatory practice may have occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code §22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

September 5, 2013

Date

Akia A. Haynes, Esq.
Deputy Director
Indiana Civil Rights Commission